IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL (L) NO.164 OF 2005
IN
SUIT NO.1665 OF 1988

M/s.R.S.Jhaveri & Co. ..Appellant.
(Orig. Deft.No.2)

Vs.

M/s.Ferro-Concrete Co.(India) fLtd. ..Respondent No.1
(Orig.Plaintiff)

M/s.Daval ..Respondent No.5
(Orig.Deft.No.1)

Mr.Somani i/b.Vinod Juwale, Advocate for the Appellant.

Mr.R.Narichania, Advocate for the Respondents.

CORAM: A.P.SHAH AND
S.J.VAZIFDAR, JJ.

DATED: 14TH MARCH, 2005

P.C. :

This is an appeal preferred by original Defendant No.2 against the order of the learned single Judge granting an ex-parte decree in Plaintiff's favour against Defendant No.2 under Order VIII Rule 2 of the C.P.C. in the sum of Rs.23,44,944/- with interest at 12% per annum on the principal sum of Rs.19,88,952/- from the date of the suit till realisation.

2. The impugned order records that the Advocate for the Plaintiff stated that Defendant No.1 is a formal party and that no decree may be passed against him.

3. The learned counsel appearing for the Plaintiff fairly conceded, and it is obvious that there was some misunderstanding on the part of all concerned. Defendant No.1 admittedly is not a formal party. If anyone, it is Defendant No.2 who could possibly be considered to be a formal party. Admittedly, Defendant No.2 was only an agent in respect of the said transaction. As it is obvious to all concerned that there was some misunderstanding, it is necessary to set aside the impugned decree passed by the learned single Judge and the same is hereby set aside.

4. Defendant No.2 is granted six weeks time to file written statement.

5. This order is without prejudice to Plaintiff’s right to apply for ex-parte decree against Defendant No.1.

6. All contentions on merits are left open to the parties.